

TERMED

**U.S. District Court
District of Colorado (Denver)
CIVIL DOCKET FOR CASE #: 1:09-cv-00837-RPM**

Schuett v. City and County of Denver, Colorado, The et al
Assigned to: Judge Richard P. Matsch
Cause: 42:1983 Civil Rights Act

Date Filed: 04/10/2009
Date Terminated: 05/20/2010
Jury Demand: Both
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Scott Schuett

represented by **Jay Wayne Swearingen**
Animal Law Center, The
4465 Kipling Street
#108
Wheat Ridge, CO 80033
303-322-4355
Fax: 303-322-4354
Email: jws@theanimallawcenter.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jennifer Reba Edwards
Animal Law Center, The
4465 Kipling Street
#108
Wheat Ridge, CO 80033
303-322-4355
Fax: 303-322-4354
Email: jre@theanimallawcenter.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

**City and County of Denver, Colorado,
The**

represented by **Thomas G. Bigler**
Denver City Attorney's Office
201 West Colfax Avenue
Denver, CO 80202-5332
720-865-8751
Fax: 720-913-3182
Email: dlefilng.litigation@denvergov.org

Defendant

Denver Police Department
TERMINATED: 08/17/2009

represented by **Thomas G. Bigler**
(See above for address)

Defendant

Denver Animal Control
other officers present
TERMINATED: 08/17/2009

represented by **Thomas G. Bigler**
(See above for address)

Defendant

Gerald (I) R. Whitman
in his individual capacity

represented by **Thomas G. Bigler**
(See above for address)

Defendant

Gerald R. Whitman
in his official capacity

represented by **Thomas G. Bigler**
(See above for address)

Defendant

Edward (I) Ash
in his individual capacity

represented by **Thomas G. Bigler**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Edward Ash
in his official capacity

represented by **Thomas G. Bigler**
(See above for address)

Defendant

Tom Sherwood
in his official capacity

represented by **Thomas G. Bigler**
(See above for address)

Defendant

Tom (I) Sherwood
in his individual capacity

represented by **Thomas G. Bigler**
(See above for address)

Defendant

Alan Fleming
in his official capacity

represented by **Thomas G. Bigler**
(See above for address)

Defendant

Alan (I) Fleming
in his individual capacity

represented by **Thomas G. Bigler**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	clear	Docket Text
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04/10/2009	<u>1</u>	<input type="checkbox"/>	COMPLAINT against Edward Ash, City and County of Denver, Colorado, The, Denver Police Department, Denver Animal Control, Gerald (I) R. Whitman, Gerald R. Whitman, Edward (I) Ash (Filing fee \$ 350, Receipt Number 18132) Summons Issued, filed by Scott Schuett. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Receipt)(jak,) (Entered: 04/13/2009)
05/11/2009	<u>2</u>	<input type="checkbox"/>	ANSWER to <u>1</u> Complaint, by Edward Ash, City and County of Denver, Colorado, The, Denver Police Department, Denver Animal Control, Gerald (I) R. Whitman, Gerald R. Whitman, Edward (I) Ash.(Bigler, Thomas) (Entered: 05/11/2009)
05/14/2009	<u>3</u>	<input type="checkbox"/>	ORDER Setting Scheduling Conference for 7/14/2009 at 02:00 PM in Conference Room and proposed order (original only) on paper, shall be submitted directly to chambers by 4:00 p.m. on July 9, 2009.. Signed by Judge Richard P. Matsch on 5/14/2009. (rpmcd) (Entered: 05/14/2009)
07/14/2009	<u>4</u>	<input type="checkbox"/>	Minute Entry - Courtroom Minutes for Scheduling Conference held on 7/14/2009 before Judge Richard P. Matsch. ORDERED: Scheduling Order approved. (Reporter FTR - K. Terasaki) (rpmcd) (Entered: 07/14/2009)
07/14/2009	<u>5</u>	<input type="checkbox"/>	SCHEDULING ORDER: Discovery due by 1/14/2010. Dispositive Motions due by 2/19/2010. Signed by Judge Richard P. Matsch on 7/14/2009. (rpmcd) (Entered: 07/14/2009)
07/24/2009	<u>6</u>	<input type="checkbox"/>	Stipulated MOTION for Protective Order by Defendants Edward Ash, City and County of Denver, Colorado, The, Denver Police Department, Denver Animal Control, Gerald (I) R. Whitman, Gerald R. Whitman, Edward (I) Ash, Plaintiff Scott Schuett. (Attachments: # <u>1</u> Proposed Stipulated Protective Order)(Bigler, Thomas) (Entered: 07/24/2009)
07/24/2009	<u>7</u>	<input type="checkbox"/>	Stipulated PROTECTIVE ORDER by Judge Richard P. Matsch on 07/24/09. (jjh,) (Entered: 07/24/2009)
08/14/2009	<u>8</u>	<input type="checkbox"/>	AMENDED COMPLAINT against all defendants, filed by Scott Schuett. (Edwards-Thomaidis, Jennifer) (Entered: 08/14/2009)
08/19/2009	<u>9</u>	<input type="checkbox"/>	ANSWER to <u>8</u> Amended Complaint by Edward Ash, Tom Sherwood, Tom (I) Sherwood, Alan Fleming, Alan (I) Fleming, City and County of Denver, Colorado, The, Gerald (I) R. Whitman, Gerald R. Whitman, Edward (I) Ash.(Bigler, Thomas) (Entered: 08/19/2009)
09/11/2009	<u>10</u>	<input type="checkbox"/>	Unopposed MOTION for Extension of Time to <i>Disclose Expert Witnesses</i> by Plaintiff Scott Schuett. (Attachments: # <u>1</u> Proposed Order (PDF Only))(Edwards-Thomaidis, Jennifer) (Entered: 09/11/2009)
09/11/2009	<u>11</u>	<input type="checkbox"/>	MOTION for Extension of Time to <i>File Expert Witness Disclosures</i> by Plaintiff Scott Schuett. (Attachments: # <u>1</u> Proposed Order (PDF Only))(Edwards-Thomaidis, Jennifer) (Entered: 09/11/2009)
09/14/2009	<u>12</u>	<input type="checkbox"/>	ORDER Extending Deadlines Re: <u>11</u> Plaintiff's Request for an Extension of Time. Discovery due by 2/12/2010 and Dispositive Motions due by 3/22/2010 (See Order for other deadlines modified). Signed by Judge Richard P. Matsch on

			9/14/2009.(rpmcd) (Entered: 09/14/2009)
09/18/2009	13	<input type="checkbox"/>	SUMMONS Returned Executed by Scott Schuett. Tom Sherwood served on 9/3/2009, answer due 9/23/2009; Tom (I) Sherwood served on 9/3/2009, answer due 9/23/2009. (Edwards-Thomaidis, Jennifer) (Entered: 09/18/2009)
09/18/2009	14	<input type="checkbox"/>	SUMMONS Returned Executed by Scott Schuett. Alan Fleming served on 9/9/2009, answer due 9/29/2009; Alan (I) Fleming served on 9/9/2009, answer due 9/29/2009. (Edwards-Thomaidis, Jennifer) (Entered: 09/18/2009)
10/13/2009	15	<input type="checkbox"/>	Second MOTION for Extension of Time to <i>Disclose Expert Witnesses</i> by Plaintiff Scott Schuett. (Edwards-Thomaidis, Jennifer) (Entered: 10/13/2009)
10/14/2009	16	<input type="checkbox"/>	ORDER Denying 15 Second Request for an Extension of Time, signed by Judge Richard P. Matsch on 10/14/2009.(rpmcd) (Entered: 10/14/2009)
10/14/2009	17	<input type="checkbox"/>	Amended MOTION for Extension of Time to <i>Disclose Expert Witnesses</i> by Plaintiff Scott Schuett. (Edwards-Thomaidis, Jennifer) (Entered: 10/14/2009)
10/16/2009	18	<input type="checkbox"/>	Minute ORDER Setting Hearing on 17 Amended MOTION for Extension of Time to Disclose Expert Witnesses for 10/21/2009 at 02:00 PM in Courtroom A by Judge Richard P. Matsch on 10/16/2009. (rpmcd) (Entered: 10/16/2009)
10/21/2009	19	<input type="checkbox"/>	ORDER All times in the present scheduling order are advanced thirty days, by Judge Richard P. Matsch on 10/21/09. (gms,) (Entered: 10/21/2009)
10/21/2009	20	<input type="checkbox"/>	Minute Entry for proceedings held before Judge Richard P. Matsch: granting 17 Motion for Extension of Time ; Motion Hearing held on 10/21/2009. All deadlines in the Scheduling Order are advanced thirty (30) days. (Court Reporter Kathy Terasaki.) (wydcd, rrk) (Entered: 10/22/2009)
11/05/2009	21	<input type="checkbox"/>	First MOTION for Trial <i>to Court and Withdraw of Jury Trial Demand</i> by Plaintiff Scott Schuett. (Edwards-Thomaidis, Jennifer) (Entered: 11/05/2009)
11/05/2009	22	<input type="checkbox"/>	Proposed Order to 21 by Plaintiff Scott Schuett. (Edwards-Thomaidis, Jennifer) Modified on 11/6/2009 This document is a proposed order (jjhsl,). (Entered: 11/05/2009)
11/06/2009	23	<input type="checkbox"/>	RESPONSE to 21 First MOTION for Trial <i>to Court and Withdraw of Jury Trial Demand</i> filed by Defendants Edward Ash, Tom Sherwood, Tom (I) Sherwood, Alan Fleming, Alan (I) Fleming, City and County of Denver, Colorado, The, Gerald (I) R. Whitman, Gerald R. Whitman, Edward (I) Ash. (Bigler, Thomas) (Entered: 11/06/2009)
11/06/2009	24	<input type="checkbox"/>	ORDER Denying 21 Plaintiff's Motion to Withdraw Jury Trial Demand, signed by Judge Richard P. Matsch on 11/6/2009.(rpmcd) (Entered: 11/06/2009)
11/13/2009	25	<input type="checkbox"/>	NOTICE <i>Regarding Expert Witnesses</i> by Plaintiff Scott Schuett (Edwards-Thomaidis, Jennifer) (Entered: 11/13/2009)
11/19/2009	26		Utility Setting/Resetting Deadlines/Hearings: Answer deadline terminated as filed. TEXT ONLY ENTRY - NO DOCUMENT ATTACHED (jjh,) (Entered: 11/19/2009)

01/28/2010	27	<input type="checkbox"/>	ORDER For Calendar Call set 4/16/2010 at 08:30 AM in Courtroom A with counsel to provide a joint statement when the case is called, signed by Judge Richard P. Matsch on 1/28/2010. (rpmcd) (Entered: 01/28/2010)
02/01/2010	28	<input type="checkbox"/>	Unopposed MOTION to Vacate 27 by Defendants Edward Ash, Tom Sherwood, Tom (I) Sherwood, Alan Fleming, Alan (I) Fleming, City and County of Denver, Colorado, The, Gerald (I) R. Whitman, Gerald R. Whitman, Edward (I) Ash. (Attachments: # 1 Proposed Order (PDF Only))(Bigler, Thomas) Modified on 2/2/2010 to add linkage (jjh,). (Entered: 02/01/2010)
02/03/2010	29	<input type="checkbox"/>	ORDER Vacating Calendar Call set for April 16, 2010 (re 27 Order) and Setting Pretrial Conference for 4/30/2010 at 02:00 PM in Conference Room and proposed pretrial order due by 4:00 p.m. 4/22/2010. Signed by Judge Richard P. Matsch on 2/3/2010. Motion 28 terminated as moot. (rpmcd) (Entered: 02/03/2010)
04/19/2010	30	<input type="checkbox"/>	Joint MOTION to Continue by Defendants Edward Ash, Edward (I) Ash, City and County of Denver, Colorado, The, Alan Fleming, Alan (I) Fleming, Tom Sherwood, Tom (I) Sherwood, Gerald R. Whitman, Gerald (I) R. Whitman, Plaintiff Scott Schuett. (Bigler, Thomas) (Entered: 04/19/2010)
04/20/2010	31	<input type="checkbox"/>	ORDER granting 30 Motion for Joint Continuance. Ordered that the 04/30/10, pretrial conference and the deadlines for submitting dispositive motions and a proposed pretrial order are vacated. Counsel shall submit a stipulation for dismissal of this action by 05/20/10 by Judge Richard P. Matsch on 04/20/10.(jjh,) (Entered: 04/20/2010)
05/20/2010	32	<input type="checkbox"/>	STIPULATION of Dismissal of Case <i>with Prejudice</i> by Defendants Edward Ash, Edward (I) Ash, City and County of Denver, Colorado, The, Alan Fleming, Alan (I) Fleming, Tom Sherwood, Tom (I) Sherwood, Gerald R. Whitman, Gerald (I) R. Whitman, Plaintiff Scott Schuett. (Bigler, Thomas) (Entered: 05/20/2010)
05/20/2010	33	<input type="checkbox"/>	ORDER for DISMISSAL. Pursuant to the stipulation for dismissal with prejudice, this action is dismissed with prejudice, each party to bear their own costs and attorneys fees, by Judge Richard P. Matsch on 5/20/10. (gmssl,) (Entered: 05/20/2010)

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Schuett, Scott

(b) County of Residence of First Listed Plaintiff El Paso
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
The Animal Law Center, LLC., 4655 Kipling Blvd. #108, Wheat Ridge, CO,
80033, 303 322-4355, Jennifer Thomaidis and Jay Swearingen

DEFENDANTS

The City and County of Denver; Denver Police Department; Denver Animal Control; Other Two Officers Present; Whitman Gerald R., and Ash, Edward, both in their official and individual capacity.

County of Residence of First Listed Defendant Denver
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
FEDERAL TAX SUITS <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609				

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgement

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 Sec. 1983 and 1988

Brief description of cause:

Taking of Private Property under Color of Law, without Due Process and Unreasonable Search and Seizure**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ 75,000.00
 CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/10/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JURY

MAG. JUDGE

'09 - CV - 00837

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

'09 - CV - 00837 RPM-CBS

Civil Action No. _____

SCOTT SCHUETT

Plaintiff

v.

THE CITY AND COUNTY OF DENVER, COLORADO,
DENVER POLICE DEPARTMENT,
DENVER ANIMAL CONTROL,
OTHER OFFICERS PRESENT,
GERALD R. WHITMAN, in his official and individual capacity;
EDWARD ASH, in his official and individual capacity,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 10 2009

GREGORY C. LANGHAM
CLERK

COMPLAINT

Plaintiff Scott Schuett, by and through counsel at the Animal Law Center, hereby files his
Complaint and Jury Demand and respectfully alleges as follows:

INTRODUCTION

1. Plaintiff brings this civil rights action pursuant to 42 U.S.C. §§ 1983 and 1988 for relief through compensatory and punitive damages and attorney's fees stemming from Defendants' violations of Plaintiffs' rights guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States. Defendants' conduct under color of state and city law proximately caused the deprivation of Plaintiff Schuett's federally protected rights. Plaintiff Schuett seeks relief through compensatory, punitive damages, and attorneys' fees.

Plaintiff seeks in excess of \$75,000.

JURISDICTION AND VENUE

2. This action arises under the Constitution and laws of the United States including Article III, Section 1 of the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has authority to grant the declaratory relief requested herein pursuant to 28 U.S.C. § 2201.

3. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391. All of the events alleged herein occurred within the state of Colorado, and all of the parties are residents of the state.

4. Jurisdiction supporting Schuett's claim for attorney fees is conferred by 42 U.S.C. § 1988.

PARTIES

5. Plaintiff SCOTT SCHUETT (hereinafter "Schuett" or "Plaintiff Schuett" or "Plaintiff") is an individual and a resident of the state of Colorado who was detained by officers of the Denver Police Department one of whom had previously shot Schuett's dog. At all pertinent times mentioned herein, Schuett was a resident of the City of Littleton and County of Denver.

6. Defendant CITY AND COUNTY OF DENVER is a municipality incorporated under the law of the state of Colorado for purposes of liability under 42 U.S.C. § 1983. It carries out law enforcement activities through the Denver Police Department.

7. Defendant DENVER POLICE DEPARTMENT is a municipal agency for purposes of

liability under 42 U.S.C. § 1983.

8. Defendant GERALD R. WHITMAN is Chief of Police of the Denver Police Department (hereinafter incorporated as “Denver Police Officers” or “police officers.”)

9. Defendant ASH (hereinafter “Ash” or “officer”) was at all times relevant to this complaint duly appointed and sworn as a police officer working for the police department of the City and County of Denver, Colorado. He is sued individually and he is also sued in his official capacity. ASH acted under color of law in the course of carrying out the actions and omissions that violated the rights of the plaintiff.

10. All Defendants acted under color of state and city law. Alternatively, or in combination, Defendants, including Defendants employed by the federal government, acted under color of federal law.

11. All of the events described herein occurred in the City of Littleton, County of Denver, and State of Colorado.

FACTUAL BACKGROUND

12. On or about July 27, 2007, at approximately 1:45 a.m., Scott J. Schuett, owner of canine Jake, a Labrador/Shepherd mix, was visited by Denver Police Department officers in regards to a noise complaint at Mr. Schuett’s home address of the 8801 West Bellevue Ave., in the City of Littleton, County of Denver, State of Colorado.

13. Schuett answered a knock on his front door with his dog Jake beside him. Denver

Police Officer Ash then drew his weapon, without reasonable cause or justification and shot Jake in the head and through the shoulder, injuring the dog.

14. Jake never attempted to harm the officer or anyone else, nor did he attempt to leave the apartment.

15. Schuett was standing inside of his apartment, directly next to Jake at the time that Officer Ash fired his weapon. Schuett felt the bullet pass by his hand.

16. Directly following the shooting of the dog two other Denver Police Officers detained Mr. Schuett, with the use of handcuffs, in the hallway of his apartment complex.

17. Schuett was not arrested, though he had to endure being handcuffed for over an hour.

18. Schuett pleaded with the officers while he was in custody to let him attend to his dog. Denver Police Officers denied all requests made.

19. Denver Police Officers requested that someone from animal control, after an unreasonable delay of forty-five minutes, be dispatched to apprehend Jake from inside the apartment.

20. Denver Animal Control Officers were able to get a snare pole on the dog and get him transported out of the apartment.

21. Schuett asked if his dog was alive and where they were taking him and received no answers.

22. In fact, Schuett was told by police officers that they did not care whether Jake lived or died.

23. Denver Police Officers produced a video camera, surrounded Schuett and told Schuett the he must state on camera that the Denver Police Officers acted appropriately during their investigation of the noise complaint.

24. Schuett made the video under coercion and fear of further harm to both himself and his dog. Based on officer comments, Schuett reasonably believed his dog would not be offered medical treatment if he did not make the video and he scared and as he was still unreasonably handcuffed at the time.

25. Schuett received a citation for noise violation.

26. Schuett's charge for noise violation was later dismissed.

27. The police officers and Animal Control Officers left, giving Schuett no information on his dog.

28. Ten hours later, Schuett was contacted and notified that his dog was alive and receiving care at Alameda East Veterinary Hospital by hospital staff.

29. As a result of the shooting and Officer Ash's use of a firearm, Schuett's dog sustained significant injuries, including, but not limited to, blood loss so severe that the veterinarian was unable to perform surgery to remove the bullet, which is currently still lodged in the dogs shoulder region.

30. Schuett's dog will need further surgeries to remove the bullet, as well as follow-up appointments to monitor his health, incurring yet greater veterinary costs.

31. Significant injuries were sustained by Schuett, due to emotional distress stemming from injuries inflicted upon the dog, his person and Mr. Schuett's proximity to the gun when it was fired.

32. Schuett also was unable to work for several days after the incident, which resulted in direct loss of wages.

33. Schuett also had to move to an apartment on the first floor due to the dog's inability to make it up that many stairs, as a direct result his rent went up.

FIRST CLAIM FOR RELIEF

(§ 1983 Fourth Amendment Violation – Unlawful Seizure of Property)

34. Plaintiff incorporates all other paragraphs of this Complaint for purposes of this claim.

35. The actions of Defendant as described herein, while acting under color of law, unlawfully deprived Schuett of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including his right to freedom from unlawful seizure of property as guaranteed by the Fourth Amendment to the Constitution of the United States of America and 42 U.S.C. §1983 in that the police meaningfully interfered in Schuett's possessory interests in his property. Jake.

36. Defendant wantonly, knowingly, recklessly, and excessively used unnecessary force

without any reasonable justification or probable cause in having his gun drawn and aimed when Schuett opened the door and then promptly firing the weapon at Jake while the dog was still within the apartment.

37. Defendants' conduct proximately caused significant injuries, damages, and losses to Schuett.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- a. actual damages in excess of \$75,000.00;
- b. a substantial sum in punitive damages;
- c. costs and reasonable attorneys fees, and
- d. such other relief as may be awarded by the Court.

SECOND CLAIM FOR RELIEF

(§ 1983 Fourth Amendment Violation – Unreasonable Search)

38. Plaintiff incorporates all other paragraphs of this Complaint for purposes of this claim.

39. The actions of Defendant as described herein, while acting under color of law, unlawfully deprived Schuett of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including his right to freedom from unreasonable search as guaranteed by the Fourth Amendment to the Constitution of the United States of America and 42 U.S.C. §1983 by coercing Schuett to make a statement on videotape pertaining to the propriety of the Officers' actions.

40. Defendant intentionally, wantonly, and knowingly used intimidation and threat of

further persecution to obtain a statement from Schuett which Schuett believed to be false and would have otherwise been unwilling to make.

41. Defendants' conduct proximately caused significant injuries, damages, and losses to Schuett.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- a. actual damages in excess of \$75,000.00;
- b. a substantial sum in punitive damages;
- c. costs and reasonable attorneys fees, and
- d. such other relief as may be awarded by the Court.

THIRD CLAIM FOR RELIEF

(§ 1983 Fourth Amendment Violation – Unlawful Seizure of Person)

42. Plaintiff incorporates all other paragraphs of this Complaint for purposes of this claim.

43. The actions of Defendant as described herein, while acting under color of law, unlawfully deprived Schuett of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including his right to freedom from unlawful seizure as guaranteed by the Fourth Amendment to the Constitution of the United States of America and 42 U.S.C. §1983 by detaining Schuett in handcuffs for approximately one hour after their investigation of the noise complaint was complete.

44. Defendant intentionally, wantonly, recklessly, knowingly and excessively used unnecessary force in detaining Schuett without any reasonable justification or probable cause.

45. Defendants' conduct proximately caused significant injuries, pain and suffering, emotional distress, damages, and losses to Schuett.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- a. actual damages in excess of \$75,000.00;
- b. a substantial sum in punitive damages;
- c. costs and reasonable attorneys fees, and
- d. such other relief as may be awarded by the Court.

FOURTH CLAIM FOR RELIEF

(§ 1983 Fifth Amendment Violation – Self Incrimination)

46. Plaintiff incorporates all other paragraphs of this Complaint for purposes of this claim.

47. The actions of Defendant as described herein, while acting under color of law, unlawfully deprived Schuett of the securities, rights, privileges, liberties, and immunities secured by the Constitution of the United States of America, including his right to be free from giving self incriminating testimony as guaranteed by the Fifth Amendment to the Constitution of the United States of America and 42 U.S.C. §1983, by videotaping Schuett's admission to the noise complaint and his coerced admission that the Officers had acted duly.

48. Defendant intentionally, wantonly, and knowingly obtained a videotaped statement from Schuett about a crime in the absence of legal counsel and against Schuett's will.

49. Defendants' conduct proximately caused significant injuries, damages, and losses to Schuett.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- a. actual damages in excess of \$75,000.00;
- b. a substantial sum in punitive damages;
- c. costs and reasonable attorneys fees, and
- d. such other relief as may be awarded by the Court.

FIFTH CLAIM FOR RELIEF

(Intentional Infliction of Severe Emotional Distress)

50. Plaintiff incorporates all other paragraphs of this Complaint for purposes of this claim.

51. The decision to shoot a companion animal that had not been identified as a vicious or aggressive animal, and who did not injure Officer Ash or anyone else, was extreme and outrageous conduct.

52. Acting under the color of law, the City of Denver and its police officers and Police Department knowingly, recklessly or with deliberate indifference and callous disregard of Plaintiff Schuett's rights failed to instruct, supervise, train, or equip its officers in their duties to a dog shot and severally wounded by one of its officers.

53. The City of Denver, its Police Department, and officers involved knew or should have known that shooting and severely wounding a companion animal, and then failing to render it medical assistance in a timely fashion, and even declaring that they did not care what happened to the animal would cause severe emotional distress to the animal's owner.

54. Police officers intentionally failed to timely contact Denver Animal Control,

furthering Plaintiff's and his dog, Jake's injuries.

55. Once Denver Animal Control was finally contacted, Denver Police Officers and Denver Animal Control Officers intentionally refused to tell Plaintiff Schuett any details about the condition of his dog or where they were taking Jake.

56. Plaintiff Schuett had no idea where his dog, Jake was taken until ten hours after the shooting incident within his apartment occurred.

57. As a direct and proximate result of such conduct, Plaintiff Schuett has been damaged in various respects including, without limitation, suffering severe emotional distress due to the intentional actions of the City and County of Denver, Denver Police Department, Denver Police Officers, and Denver Animal Control.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- a. actual damages in excess of \$75,000.00;
- b. a substantial sum in punitive damages;
- c. costs and reasonable attorneys fees, and
- d. such other relief as may be awarded by the Court.

SIXTH CLAIM FOR RELIEF

(Negligent Infliction of Severe Emotional Distress)

58. Plaintiff incorporates all other paragraphs of this Complaint for purposes of this claim.

59. The decision to shoot a companion animal that had not been identified as a vicious or aggressive animal, and who did not injure Officer Ash or anyone else, was extreme and

outrageous conduct.

60. Acting under the color of law, the City of Denver and its police officers and Police Department knowingly, recklessly or with deliberate indifference and callous disregard of Plaintiff Schuett's rights failed to instruct, supervise, train, or equip its officers in their duties to a dog shot and severally wounded by one of its officers.

61. The City of Denver, its Police Department, and officers involved knew or should have known that shooting and severely wounding a companion animal, and then failing to render it medical assistance in a timely fashion, and even declaring that they did not care what happened to the animal would cause severe emotional distress to the animal's owner.

62. Police officers negligently failed to contact Denver Animal Control, furthering Plaintiff's and his dog, Jake's injuries.

63. Once Denver Animal Control was finally contacted, Denver Police Officers and Denver Animal Control Officers negligently refused to tell Plaintiff Schuett any details about the condition of his dog or where they were taking Jake.

64. Plaintiff Schuett had no idea where his dog, Jake was taken until ten hours after the shooting incident within his apartment occurred.

65. As a direct and proximate result of such conduct, Plaintiff Schuett has been damaged in various respects including, without limitation, suffering severe emotional distress due to the intentional actions of the City and County of Denver, Denver Police Department, Denver Police Officers, and Denver Animal Control.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- a. actual damages in excess of \$75,000.00;
- b. a substantial sum in punitive damages;
- c. costs and reasonable attorneys fees, and
- d. such other relief as may be awarded by the Court.

PRAYER FOR RELIEF

WHEREFORE, Schuett respectfully requests that this Court enter judgment in his favor and against the Defendants, and grant:

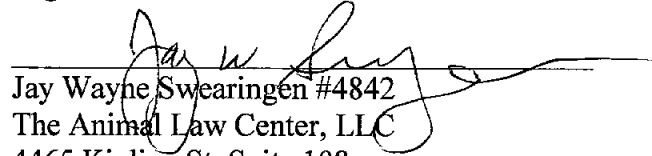
- (a) Appropriate declaratory and other injunctive and/or equitable relief;
- (b) Compensatory and consequential damages, including damages for veterinary bills, ongoing and future costs of care for Jake's injuries, cleaning and repair costs for the damages to Schuett's home, emotional distress, loss of enjoyment of life, and other pain and suffering on all claims allowed by law in an amount to be determined at trial;
- (c) All economic losses on all claims allowed by law;
- (d) Punitive damages on all claims allowed by law and in an amount to be determined at trial;
- (e) Attorneys fees and the costs associated with this action, including those associated with expert witness fees, on all claims allowed by law;
- (f) Pre- and post-judgment interest at the lawful rate.
- (g) Any further relief that this court deems just and proper, and any other relief as allowed by law.

PLAINTIFF DEMANDS A JURY ON ALL ISSUES TRIABLE,

Respectfully submitted this 10th day of April, 2009,



Jennifer Reba Edwards-Thomaidis #38349
The Animal Law Center, LLC
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Wheat Ridge, Colorado 80033
Telephone: (303) 322-4355
Facsimile: (303) 322-4354
jrt@theanimallawcenter.com



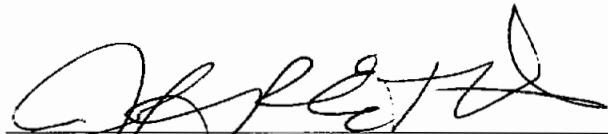
Jay Wayne Swearingen #4842
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Facsimile: (303) 322-4354
jws@theanimallawcenter.com

Plaintiff's Address:

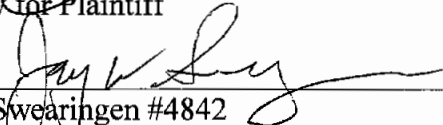
5915 Vista Ridge Point
Unit 104
Colorado Springs, CO 80918

CERTIFICATE OF SERVICE

I hereby certify that a true and correct image of the above and foregoing was personally filed with the clerk of United States District Court, for the District of Colorado, April 10, 2009:



Jennifer Reba Edwards-Thomaidis #38349
Attorney for Plaintiff



Jay W. Swearingen #4842
Attorney for Plaintiff

Court Name: U.S. District Court, Colorado
Division: 1
Receipt Number: COX018132
Cashier ID: sg
Transaction Date: 04/10/2009
Payer Name: THE ANIMAL LAW CENTER

CIVIL FILING FEE
For: THE ANIMAL LAW CENTER
Amount: \$350.00

CHECK
Check/Money Order Num: 5022
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

09-CV-00837

A fee of \$45.00 will be assessed on
any returned check.